



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Hiscock & Barclay, LLP
2000 HSBC Plaza
Rochester, NY 14604-2404

COPY MAILED

JUL 20 2005

OFFICE OF PETITIONS

In re Application of	:	
Frank X. Smith	:	
Application No. 09/706,318	:	ON PETITION
Filed: November 4, 2000	:	
Attorney Docket No. 90337.032702	:	

This is a decision on the petition under 37 CFR 1.137(b), filed June 28, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lacks item (1).

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of June 5, 2002. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the

filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). Since the amendment submitted with the present petition does not *prima facie* place the application in condition for allowance, again, the reply required must be a Notice of Appeal (and appeal fee), RCE, or the filing of a continuing application under 37 CFR 1.53(b).

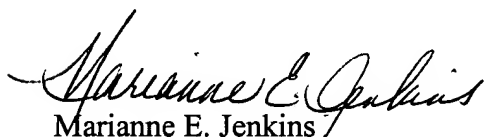
Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
 P. O. Box 1450
 Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3223.



Marianne E. Jenkins
Petitions Examiner
Office of Petitions

Attachment: Advisory Action